authorization does not create the legitimate expectation of a construction permit or a license, Motorola cannot use the Commission's award of experimental licenses to other applicants to justify its present application to begin construction of its own system in advance of the award of a license.

In sum, and notwithstanding its disingenuous protestations to the contrary, Motorola clearly is seeking an unfair competitive advantage over the other MSS/RDSS applicants. The harm that would be caused by the proposed waiver would be exacerbated by the fact that the Commission is only now developing ground rules for the MSS/RDSS service, and thus is especially vulnerable to the influence exerted by a competing applicant's expenditure of many millions of dollars in advance of Commission action. The inevitable prejudice that would result from the authorization of such an expenditure would thus be felt not only by the competing applicants, but also by the public, in that rules would be adopted by an agency improperly swayed by

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28/ (...continued)

Id.

Motorola's expenditures of funds.[29/] The Commission should not allow this taint to occur.

III. MOTOROLA HAS FAILED TO DEMONSTRATE THAT THE GRANT OF ITS WAIVER REQUEST WOULD ADVANCE ANY INTEREST OTHER THAN MOTOROLA'S PRIVATE PECUNIARY INTERESTS.

Under Section 319(d) of the Act, the Commission may not waive the requirement of a permit for construction "unless the Commission determines that the public interest, convenience and necessity would be served by such a waiver."[30/] Any waiver granted under Section 319(d) must be based on "sufficient justification."[31/] The Commission's public interest finding "must be such as to outweigh the prejudicial impact an interim

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29/ The courts have emphasized the paramount importance of fairness in the Commission's licensing process and in the licensing processes of other federal agencies. See Consolidated Nine, 403 F.2d at 595 ("the public has a far greater interest in the fairness of the licensing process than in simply adding -- or keeping -- one more broadcast facility on the air"); Kodiak Airways, 447 F.2d at 350 ("The [Civil Aeronautics] Board has recognized the paramount public interest involved in maintaining the fairness and objectivity of its certification procedures by refusing to grant exemption authority where its later decision regarding certification might be affected by the grant") (citations omitted).

30/ 47 U.S.C. § 319(d) (1982).

31/ See Satellite Business Systems, 61 F.C.C.2d at 317.

grant might have on the decision on the regular authorization."[32/]

Motorola maintains in its waiver request that a waiver would be in the U.S. national and public interest because the public would benefit from having access to its proposed satellite system sooner rather than later, foreign entities proceeding with competitive systems should not be allowed to obtain an advantage, the grant would perpetuate U.S. preeminence in satellite services, and any delay in construction would delay or destroy the stimulus to the economy that it claims its proposed system would provide.[33/] Motorola's assertions may be worthy arguments in favor of the expeditious resolution of the MSS/RDSS proceedings, and in fact have been made there by several of the applicants. They do not, however, justify the grant of a waiver that would improperly prejudice and irrevocably taint the outcome of those proceedings.

For example, while the threat of foreign competitive systems may be real, that alone is no reason to give an unfair advantage to Motorola vis-a-vis its U.S. competitors -- particularly in view of numerous petitions calling into question

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32/ Beloit Broadcasters v. FCC, 365 F.2d 962, 963 (D.C. Cir. 1966).

33/ Motorola Request at 7-9.

the very viability of the Iridium concept.[34/] Similarly, the laudable objectives of preserving U.S. preeminence in satellite services and U.S. global competitiveness would be better served by the Commission's reasoned and expeditious resolution of the MSS/RDSS licensing proceeding than by the grant of waivers that could improperly sway the Commission's ultimate decisions, and therefore lead to continued litigation and the very delay that Motorola claims it seeks to avoid. Indeed, by diverting the Commission's attention from the rulemaking issues in order to address this Request, Motorola has actually delayed the establishment of the MSS/RDSS service -- to the direct detriment of the public interest.[35/]

34/ Motorola asserts that "TRW's ongoing contractual relationship with Inmarsat-P has softened its views of potential foreign competition." Motorola Letter at 2. Motorola's false claim is an obvious effort to cloud the issue at hand. Motorola seeks an unfair advantage over its U.S. competitors in making its waiver request, and it is as a U.S. corporation eager to compete at home and abroad that TRW objects to that request.

35/ Motorola suggests that it is TRW's counsel that is delaying the licensing process by engaging in unnecessary litigation. Id. at 2. Nonsense. The roadside of this proceeding is strewn with the detritus of Motorola's many attempts -- running the gamut from the outlandish to outright unlawful -- to obtain a license for its proposed satellite system at any cost (e.g., its request to treat certain materials relating to its pioneer's preference claim as confidential, thus necessitating weeks of effort to fashion a confidentiality agreement to protect what turned out to be wholly useless material). TRW will accept no blame whatsoever for the time consumed by its legitimate efforts

(continued...)

Finally, TRW is compelled to observe that the cases cited by Motorola as support for its waiver request[36/] are inapposite. The $40 million waiver granted to Non-Voice, Non-Geostationary ("NVNG") MSS applicant Orbital Communications Corporation,[37/] while highly irregular and still facing a serious challenge, was made under circumstances far different from those extant here. In the NVNG MSS proceeding, all of the applicants had agreed on and filed a sharing plan with the Commission. The same is clearly not so here, for reasons explained above.[38/] Because Motorola would reject sharing under the plan sponsored by TRW and its co-filers, and because it will presumably reject the sharing proposal advanced in the Commission's forthcoming NPRM in CC Docket No. 92-166, the sharing issue cannot even be considered provisionally resolved.

The decisions on waiver requests by PanAmSat, L.P. and AMSC are no more helpful to Motorola.[39/] In PanAmSat, the

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35/ (...continued)
to ensure that the MSS/RDSS service is established on a fair and pro-competitive basis.

36/ See Motorola Request at 9-11.

37/ See Letter to ORBCOMM, cited in Motorola Request at 9-10.

38/ See Section II, supra.

39/ See Motorola Request at 10-11 (citing PanAmSat, L.P., 8 FCC Rcd 5120 (1993) ("PanAmSat"); Letter dated May 6, 1992, from (continued...)

Commission granted PanAmSat's request for additional expenditures on its international separate satellite (PAS-4) partly on the grounds that "no other U.S. separate systems applicant would be prejudiced by grant of the requested waiver."[40/] There was no potential mutual exclusivity and no petitions were filed against the PanAmSat applications. In the present case, as explained above, "other applicants" clearly would be prejudiced by the grant of Motorola's waiver request.

In AMSC, the Commission found that the public interest would be served by the grant of a Section 319(d) waiver to allow AMSC to expend up to $32 million for the period ending April 1, 1993 to continue with construction and to incorporate proposed modifications to its AMSC-1 space station. Prior to granting the waiver, however, the Commission had granted AMSC authorization to construct, launch and operate the mobile satellite system of which AMSC-1 would be a part.[41/] In contrast, Motorola has not

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39/ (...continued)
Chief, Domestic Facilities Division, to Brian B. Pemberton ("AMSC"), cited in AMSC Subsidiary Corporation, 8 FCC Rcd 4040, 4041 at n.15 (1993)).

40/ PanAmSat, 8 FCC Rcd at 5121.

41/ See Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, 7 FCC Rcd 266 (1992) (subsequent history omitted).

received even a conditional construction permit to build its proposed satellite system.[42/]

IV. THE FULL COMMISSION SHOULD RULE ON MOTOROLA'S WAIVER REQUEST.

Motorola directs its request for authority to spend $30.513 million on pre-authorization construction of its proposed Iridium system to the Common Carrier Bureau.[43/] To the extent that the Common Carrier Bureau might determine that the expenditures for which Motorola seeks a waiver exceed the

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42/ Motorola adds that "the Commission has long recognized the desirability of granting Section 319(d) waivers where doing so would avoid delays in service, excess costs, or other similar adverse consequences." Id. at 11 n.25 (citations omitted). TRW notes that, once again, the decisions cited by Motorola involved circumstances markedly different from the present situation. As explained above, the Commission's decision in Satellite Business Systems involved a "small" expenditure of funds that the Commission found not to constitute a "piecemeal authorization." See supra note 14. At $30 million, Motorola's proposed expenditure cannot rationally be considered anything other than huge. In the letter to Norman P. Leventhal cited by Motorola, the Common Carrier Bureau granted a waiver of Section 319(d) to PanAmSat to obtain and reconfigure a satellite as part of a proposed modification to a system for which a conditional construction permit had already been granted, and as to which there was no mutual exclusivity among applications. Finally, in Communications Satellite Corp., 42 F.C.C.2d 677 (1973), the Commission granted a waiver to Comsat to begin construction of its proposed satellites in a proceeding that apparently involved no competing applicants. As no other applicants could have been prejudiced by the Commission's decision, the case can hardly be considered on point.

43/ Motorola Request at 1.

Bureau's delegated authority, however, Motorola asks that the Commission grant a separate waiver for the excess.[44/] Motorola also requests that, "to the extent that action on the full amount by the Bureau and/or the Commission would delay a decision beyond June 1, 1994,"[45/] it be granted $10 million by June 1, 1994, and the remaining $20.513 million by September 1, 1994.[46/] TRW urges the Commission to reject Motorola's piecemeal approach, and to rule on the entire waiver request at one time.

Motorola has asserted to the Commission that it will offer bulk air time over its proposed satellite system on a non-common carrier basis.[47/] Under 47 C.F.R. § 0.291(d), "[t]he Chief, Common Carrier Bureau shall not have authority to determine whether a construction permit shall be granted for a non-common carrier satellite system, or any part thereof, where the construction costs are in excess of $10 million."[48/]

44/ See id. at 3 & n.11.

45/ Id.

46/ Id.

47/ See Application of Motorola Satellite Communications, Inc. For Authority to Construct, Launch and Operate a Low Earth Orbit Satellite as Part of the Iridium System (Iridium I), at 2, File Nos. 9-DSS-P-91 (87) and CSS-91-010.

48/ 47 C.F.R. § 0.291(d) (1993) (emphasis added). Motorola acknowledges the applicability of Section 0.291(d) to its current request for a waiver of Section 319(d) of the Act in the request itself. See Motorola Request at 3 & n.11.

Because the expenditure proposed in Motorola's waiver request alone is more than three times the limit set forth in the Commission's rules (while the construction costs for the full Iridium system are conservatively estimated by Motorola to be $3.4 billion), the Bureau lacks the authority to grant Motorola a waiver for all or any part of the expenditure it wishes to make to begin construction of its proposed satellite system. Motorola may not divide the cost of its "long-lead procurement" into smaller parts or spread the cost over several months in a transparent attempt to evade scrutiny by the full Commission.

In view of the substantial implications of Motorola's waiver request, the full Commission should rule on the entire request at one time. TRW urges the Commission to recognize that Motorola is not requesting a series of waivers for small expenditures that can by any stretch of the imagination be considered insignificant to the licensing process.[49/] To consider fractions of Motorola's proposed expenditure on separate

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49/ In Community Broadcasting, the court found that an expenditure of approximately $250,000 under a temporary authorization by an applicant in a comparative licensing proceeding would have "a force which cannot always be set aside by the triers no matter how sincere their effort or intent." Community Broadcasting, 274 F.2d at 759. In its present request, Motorola seeks a waiver to spend more than 122 times that amount and yet claims that such an expenditure will not prejudice the ongoing licensing proceeding.

occasions would only serve to obscure the enormous prejudicial impact that the total expenditure would have. In addition, the consideration of the waiver in separate parts would only serve to delay further the ongoing MSS/RDSS licensing process. TRW therefore urges that the full Commission rule on Motorola's requested waiver for the entire proposed expenditure at one time.[50/]

V. CONCLUSION

Because Motorola's requested waiver of Section 319(d) would have a powerful prejudical effect on the ongoing MSS/RDSS licensing and application proceedings, and because Motorola has presented no valid bases for the grant of such a waiver, TRW respectfully asks that the Commission reject Motorola's request. TRW urges the Commission to make its ruling on Motorola's entire waiver request at one time so as to consider its full prejudicial

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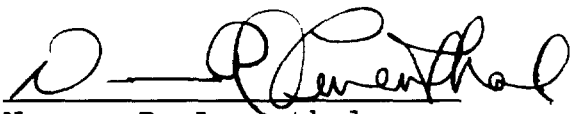
50/ In this last regard, TRW observes that the Motorola Letter was addressed to the Secretary of the Commission, as opposed to the Acting Chief of the Common Carrier Bureau. TRW interprets this choice as a tacit acknowledgement by Motorola that full Commission action is warranted.

impact, and so as to avoid any further delay to the MSS/RDSS licensing and applications proceedings.

Respectfully submitted,

TRW Inc.

By: 

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February 14, 1994

Its Attorneys

ATTACHMENT A

FILE COPY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re Applications of		
MOTOROLA SATELLITE COMMUNICATIONS, INC.	File Nos.	2303-EX-PL-91
		2304-EX-PL-91
For Experimental Authority to Test Certain Technologies Related to Its IRIDIUM Satellite System and to Construct, Launch and Operate Seven Satellites		2305-EX-PL-91
		2306-EX-PL-91
		2307-EX-PL-91

To: The Chief Engineer

PETITION TO DENY

TRW INC.

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SUMMARY

TRW hereby petitions the Federal Communications Commission to deny Motorola's request to construct, launch, and operate seven satellites of its proposed 77-satellite low Earth orbit "Iridium" system in the guise of an "experimental" application.

Motorola's application for permanent authorization to construct the Iridium system was filed in 1990 and is currently pending before the Commission. However, the Commission is also currently considering mutually exclusive applications filed by TRW as well as four other parties, each of which proposes to provide similar or alternative satellite services on the same frequencies. Because Motorola proposes exclusive use of the frequencies, a grant of its Iridium application would preclude a grant of any of the other satellite proposals, and would thus preclude the development of a competitive service.

Motorola's proposed $1.3 billion, one-year, in-orbit, satellite experiment is in fact nothing more than a thinly veiled attempt by Motorola to circumvent licensing requirements contained in the Communications Act and the FCC's regulations in order to begin premature construction of its Iridium system and thereby gain an unfair licensing and competitive advantage over TRW and its other competitors. Motorola has not proposed a detailed course of experimental study. Rather, Motorola simply proposes to build seven fully-functional Iridium

satellites (one-eleventh of its entire system) on the same schedule proposed in its full-service application, and to license them for four years -- twice the normal experimental period.

Prior case law holds that premature construction (even if pursuant to experimental authorization), and the large expenditures associated therewith, can be used to exert undue pressure on the Commission in subsequent rulemaking or licensing proceedings, and thus may result in an undesirable and unlawful prejudicial impact on the Commission's decisionmaking processes. Even the mere existence of a valuable but unused in-orbit satellite resource may subtly influence a Commission decision.

Thus, a grant of Phase Four of Motorola's alleged experiment poses an unacceptable and impermissible risk of prejudice to the full and fair consideration of the mutually exclusive proposals of TRW and other applicants in related rulemaking and licensing proceedings. This is especially true given the unprecedented scope and expense of Motorola's so-called experiment. Accordingly, the Commission has no choice but to deny the space segment phase of Motorola's experimental program.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re Applications of		
MOTOROLA SATELLITE COMMUNICATIONS, INC.	File Nos.	2303-EX-PL-91
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		2307-EX-PL-91

To: The Chief Engineer

PETITION TO DENY

I. INTRODUCTION

TRW Inc. ("TRW"), by its attorneys, hereby petitions the Commission to deny in part the above-captioned applications filed by Motorola Satellite Communications, Inc. ("Motorola"), on October 16, 1991, requesting experimental authority to conduct a variety of tests in connection with its proposed Iridium satellite system. Specifically, TRW opposes "Phase Four" of Motorola's proposed experiment, which involves the construction, launch, and operation of seven satellites in a

single orbital plane.[1/] These satellites are identical to the satellites Motorola proposes to construct and operate for its 77-satellite Iridium system.

Motorola is thus asking for authority to construct one-eleventh of its entire Iridium system -- all without the benefit of a Commission decision that addresses the myriad basic qualifications and policy issues that are presented by Motorola's Iridium application and the several pending applications (including TRW's "Odyssey" proposal) that are mutually exclusive therewith. Because there is no rational experimental necessity for seven satellites, and because Motorola's request would have a significant prejudicial impact on the various pending Commission rulemaking and licensing proceedings concerning TRW and the other applicants for satellite systems to operate in the 1610-1626.5 MHz band, Motorola must not be permitted to implement "Phase Four" of its proposed experimental program.

1/ Phases One through Three of Motorola's proposed experiment involve the use of flyovers by aircraft outfitted with various transmission equipment and antenna arrays designed to simulate and test certain data links and systems for use in its Iridium satellites.

II. Because Motorola's Experimental Application Raises Issues That Are Pending Before the Commission in Other Proceedings Involving Mutually Exclusive Applications and Petitions for Rule Making, Consideration of This Petition Is Warranted.

A. Motorola's Experimental Applications Are Inextricably Related to Its Proposed Full-Service Iridium Satellite System.

On December 3, 1990, Motorola applied to the Commission for authority to construct, launch, and operate a low Earth orbit ("LEO") satellite system consisting of seventy-seven in-orbit satellites in order to provide a global digital mobile personal communications network (FCC File Nos. 9-DSS-P-91(87) and CSS-91-010). Motorola's proposed Iridium system would operate on an exclusive basis in the 1616.5-1626.5 MHz band.[2/] The 1610-1626.5 MHz band, along with the 2483.5-2500 MHz band, is allocated domestically to the radiodetermination satellite service ("RDSS").

In response to Motorola's proposal, the Commission received numerous comments and petitions to deny from interested parties.[3/] Furthermore, several parties including

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2/ At the time Motorola filed its Iridium system application, Ellipsat Corporation ("Ellipsat") had already filed an application for use of the same frequencies as part of its frequency requirements for a six-satellite LEO system called Ellipso I (FCC File No. 11-DSS-91-(6)).

3/ Comments on or petitions to deny Motorola's Iridium system were filed by: TRW; Hughes Aircraft Company ("Hughes"); Ellipsat; Constellation Communications, Inc. ("Constellation"); Norris Satellite Communications, Inc.;

(Footnote continued on next page)

TRW filed applications and rule modification requests proposing alternative satellite systems that would operate in at least some part of the RDSS-band frequencies.[4] A grant of Motorola's application, because of technical incompatibility, would require the denial of the RDSS-band proposals filed by TRW and the other applicants. Thus, Motorola's proposed Iridium system is mutually exclusive with each of the five other pending applications for systems in the RDSS band. See 47 C.F.R. § 25.155(a).

Motorola's proposed Iridium system differs from Phase Four of its experimental program only in scale. For Iridium, Motorola contemplates the construction of 87 satellites, 77 of which would be launched into the initial Iridium constellation

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(Footnote continued from previous page)

3/ Communications Satellite Corporation; GTE Spacenet Corporation; RDSS, Inc.; National Academy of Sciences; the Drug Enforcement Administration; and American Mobile Satellite Corporation ("AMSC").

4/ The following parties filed applications for satellite systems that would use the RDSS frequencies sought by Motorola: TRW, File Nos. 20-DSS-P-91(12) and CSS-91-015 (Odyssey system); Loral Qualcomm Satellite Services Inc. ("Loral"), File Nos. 19-DSS-P-91(48) and CSS-91-014 (Globalstar System); Constellation, File Nos. 17-DSS-P-91(48) and CSS-91-013 (Aries System). In addition, Ellipsat submitted additional applications for a second phase system, File No. 18-DSS-P-91(18) (Ellipso II), and AMSC amended its domestic generic mobile satellite service ("MSS") application to include frequencies in the RDSS bands on two of its satellites (File Nos. 15-DSS-MP-91 and 16-DSS-MP-91). In addition, TRW, Loral, Constellation, Motorola, AMSC and Ellipsat have all filed petitions for rule making in connection with their applications.

(11 orbital planes of 7 satellites each). In its experimental applications, which were filed pursuant to Part 5 of the Commission's Rules (the Nonbroadcast Experimental Radio Services), Motorola contemplates the construction, launch, and operation of seven satellites. As explained in greater detail in Section II(B) below, however, the satellites proposed in Motorola's experimental applications are identical to, and thus appear intended to become, the first orbital plane of Motorola's full-service Iridium satellite system.

B. Phase Four of Motorola's Proposal Is Not An Experiment But Rather An Attempt to Seek An Improper Licensing and Competitive Advantage Over Other Applicants.

Motorola's instant request to expend well over $1.3 billion, in order to construct, launch and operate seven satellites for a one-year experiment, quite simply is not credible.[5/] In fact, when examined closely, that phase of

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5/ In its Iridium application, Motorola provided preliminary estimates of the cost of constructing the Iridium system. The overall system cost was estimated to be $3.75 billion. See Iridium Application at Table VIII-3. A simple calculation to determine the cost of one eleventh of the overall system would be to divide this figure by eleven -- for a cost figure of $340 million. However, Motorola noted that research costs would be heaviest during the first few years. Iridium Application at p. 113. Thus, its cost calculations reflect substantial non-recurring front-end development costs that would be the same for seven or seventy-seven satellites. Motorola predicted that costs up through the year of the launch of the first space vehicle would amount to $1.46 billion, $67 million of which would already have been spent in 1990 and

(Footnote continued on next page)

Motorola's experiment is nothing more than a thinly veiled attempt to begin construction of the full Iridium system and thereby substantially influence the Commission's ultimate decision in the closely related rulemaking and licensing proceedings.

In its experimental proposal, Motorola notes that "the configuration and functional capability of each [experimental] satellite will be identical and will conform to the description presented in Section V(B) of the [full-service] Application." Experimental Proposal at p.5. However, Motorola fails to explain why the satellites proposed for its limited one-year experiment need to be identical in all respects to the fully-functional satellites proposed for its full-service Iridium system.

The answer to this question is readily apparent: these satellites are not intended to be experimental in nature, but are intended to be the first seven operational satellites in the full-service Iridium system. Even Motorola does not attempt to conceal this fact. It quite plainly states in its experimental application that "this first group of satellites

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(Footnote continued from previous page)

5/ 1991. Iridium Application at Table VIII-3. Thus, the nonretrievable cost of Phase Four of Motorola's proposed experiment could be well in excess of $1.3 billion ($1.46 billion less the $67 million already spent). In sum, Motorola would have the Commission believe that it would underwrite and assume such costs for the experiment alone -- even if no permanent system authorization was forthcoming.

will form a mini constellation operating in the proposed Iridium circular orbit. . . ." Experimental Proposal at p.5 (emphasis added). In addition, the timetable for the construction and deployment of the seven "experimental" satellites coincides exactly with the timetable for the construction and deployment of the first Iridium satellites as set forth in Motorola's Iridium application.6/

The clear purpose of Phase Four of Motorola's experiment is also evidenced by the absolute lack of any clear experimental design or objectives. For example, Motorola fails to explain why it requires a full seven satellites for its alleged experiment. Rather, it vaguely and self-servingly pronounces that seven satellites is a "lower bound number" that will allow for "implementation of the range of options afforded by the communications protocol software." Experimental Proposal at p.6.

Motorola provides no support whatsoever for this statement. It would seem appropriate that where an applicant is proposing to conduct a $1.3 billion "experiment," it would explain in some meaningful detail something of its experimental

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6/ In its experimental application, Motorola proposes to begin construction of its seven satellites in 1992 and to launch them in December of 1994. Experimental Proposal at p.5. Conspicuously, Motorola's full-service application also calls for the initiation of satellite construction in 1992 and the initiation of satellite launches in 1994. Iridium Application at p.113, Table VIII-2.

design and how each piece of specially licensed equipment is necessary to the achievement of its experimental goals.

As further evidence of the nonexperimental nature of Phase Four of Motorola's proposal, it is instructive that Motorola has failed to set forth a course of study that will fit within the bounds of the basic license term provided for by the Commission's Rules. Whereas Section 5.63 (47 C.F.R. § 5.63) provides only for a two-year basic license term for Part 5 experimental authorizations, Motorola -- without providing any explanation or seeking a waiver -- simply requests a four-year authorization for each of its seven satellites.[7/]

The mere fact that the four-year authorizations requested by Motorola violate the two-year limit imposed by the Commission's Rules is sufficient, in and of itself, to require the denial of the satellite applications.[8/] Motorola, however,

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7/ In response to Question 11 on FCC Form 442, Motorola simply listed four years for each satellite application. It should also be noted that Motorola improperly requested three-year experimental license terms for authorizations to be used in conjunction with the first three phases of its proposal.

8/ The fact that satellites require larger amounts of time to construct than other types of radio stations is not a mitigating factor here. Recently, the Commission granted two experimental satellite applications. In each case, the applicant received only the standard two-year authorization. See Afrispace, Inc., FCC File No. 2075-EX-PL-91, granted June 21, 1991 (satellite in geostationary orbit); Orbital Sciences Corporation, FCC File No. 1549-EX-R-91, granted August 1, 1991 (satellite in circular Polar orbit). Notably, neither of these applications was opposed.

compounds this defect by failing to explain the patent discrepancy between the request for a four-year authorization and its textual description of a 12-month experimental operation of the satellites. See Experimental Proposal at p.5. In this last regard, it is also unreasonable to believe that Motorola would construct and launch seven satellites, which are estimated to have an operational lifespan of between five and eight years each, for the purpose of performing a 12-month experiment. See Iridium Application at p.83.

Common sense makes manifest the conclusion that Phase Four of Motorola's proposed experiment is merely an attempt to commence construction of its Iridium system prior to being awarded a construction permit. This attempt is in direct contravention to the construction permit requirement of Section 319 of the Communications Act,[9/] and inures to the detriment of other mutually exclusive applicants.

Thus, the fourth phase of Motorola's experimental proposal, which is unaccompanied by any stated justification for the unprecedented magnitude of the undertaking, far exceeds the bounds of reasonable experimentation. Instead, it

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9/ In its Iridium application, Motorola stated that it would request a waiver pursuant to Section 319(d) of the Act in order to begin construction of the Iridium system prior to the receipt of a construction permit. See Iridium Application at pp. vi & 111. It appears, however, that Motorola never did file a Section 319(d) waiver request -- at least not until it filed its instant experimental application in which it attempts to achieve the same result.